

1 CARLSMITH BALL LLP
 2 Carlsmith Building, Capitol Hill
 3 P.O. Box 5241
 4 Saipan, MP 96950-5241
 5 Tel No. 670.322.3455

6
 7 Attorneys for Defendant
 8 Maeda Pacific Corporation

MAY 10 2006
 9 For The Northern Mariana Islands
 10 By _____
 11 (Deputy Clerk)

12 UNITED STATES DISTRICT COURT

13 FOR THE

14 NORTHERN MARIANA ISLANDS

15 TOSHIHIRO TAKAHASHI,

16 Plaintiff,

17 vs.

18 MAEDA PACIFIC CORPORATION,

19 Defendant.

20 CIVIL ACTION NO. CV 05-0026

21 MOTION FOR ORDER TO SHOW
 22 CAUSE; DECLARATION OF JOHN D.
 23 OSBORN; EXHIBITS A-D.

24 DATE: MAY 19 2006

25 TIME: 8:30 a.m.

26 JUDGE: Alex R. Munson

27
 28 Comes now the Defendant Maeda Pacific Corporation and moves the Court for an order
 29 directing Keith W. Ada who is under subpoena in the above matter to appear immediately, or at
 30 such time as the Court may direct, and show cause why he should not be held in contempt of this
 31 Court for failure to answer questions propounded to him during his deposition on May 2, 2006.

32
 33 This motion is supported by the Memorandum of Points and Authorities attached hereto,
 34 the declaration of John D. Osborn, the pleadings filed herein and such additional evidence as
 35 may be produced at argument on the motion.

36 CARLSMITH BALL LLP

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 38 DATED: Saipan, MP, May 9, 2006.

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 40 
 41 JOHN D. OSBORN
 42 Attorneys for Defendant
 43 Maeda Pacific Corporation

MEMORANDUM OF POINTS AND AUTHORITIES

I. Background:

1. On May 2, 2006 Keith W. Ada appeared at the offices of Carlsmith Ball LLP in response to a subpoena to give deposition testimony in the above matter.¹ A copy of the Subpoena and Notice of Deposition served on Ada are attached hereto as Exhibit A.

2. During the course of the deposition counsel for Defendant attempted to question Mr. Ada regarding the allegations in CNMI Superior Court Civil Action No. 06-0038C, *Keith W. Ada d/b/a Ada's Consulting Services v. Marianas Services Ent., Inc. dba Neo Remington, and Toshihiro Takahashi, Personally and as officer of Marianas Sunrise Ent. Inc.*, and his deteriorating relationship with Plaintiff in this case. A copy of the *Ada v. Marianas Sunrise Complaint* is attached hereto as Exhibit B.

3. Mr. Ada refused to answer questions regarding the deteriorated relationship with Mr. Takahashi or the allegations contained in his lawsuit.

4. Although not representing Mr. Ada, Plaintiff's counsel sought to discourage Defendant's counsel from pursuing questioning on the subject issues.

5. Attached hereto as Exhibit C are pages 27-34 of the Keith W. Ada deposition transcript which is that part of the deposition in question.

6. In an attempt to resolve the matter, counsel for Defendant attempted to communicate with Mr. Ada's attorney but has received no response to such communications. Attached hereto marked as Exhibit D are copies of email and fax communications to Mr. Ada's attorney.

Defendant Maeda Pacific having been unsuccessful in attempting to resolved this matter without the Court's intervention requests the Court issue an Order directing Keith W. Ada to

¹ Ada's deposition was originally set for April 28, 2006, but was re-scheduled to May 2, 2006 when he failed to appear on April 28, 2006.

1 appear and show cause why he should not be found in contempt of this Court for his refusal to
2 answer questions asked of him in his deposition.

3 II. Refusal To Answer Is A Basis For Contempt:

4 F.R.C.P. 26(b)(1) permits discovery of any matter not privileged that is relevant. Such
5 relevant information need not be admissible so long as it appears to be reasonably calculated to
6 lead to the discovery of admissible evidence. It is not the prerogative of the witness to determine
7 what is or is not relevant and unless privileged, the witness is required to answer questions
8 propounded. Whether the evidence is ultimately determined to be relevant and admissible is for
9 the Court to determine.

10 A witness who is not a party has no legal right upon the taking of
11 his deposition, to refuse to answer any question, upon the advise of
12 his attorney, merely because the attorney believes that the
13 testimony sought is irrelevant, incompetent or immaterial (citation
omitted). *Ex parte Oliver*, 180 N.E.2d 599, 601 (1962)

14 See: *In Re Keller*, 49 Cal.App.3d 663, 667 (1975).

15 A witness, of course, cannot 'pick and choose' the questions to
16 which an answer will be given. The management of the trial rests
17 with the judge and no party can be permitted to usurp that function.
(citing *Yates v. U.S.* 355 U.S. 66, 73 and 78 S.Ct. 128, 133
2L.Ed.2d 95)

18 III. Defendant Entitled To Inquire

19 The deponent was apparently previously involved with Plaintiff on several projects and
20 allegedly has provided business advice to Plaintiff. The relationship between the deponent and
21 Plaintiff has deteriorated and the deponent currently is suing Plaintiff in the CNMI Superior
22 Court. Defendant believes it is relevant to inquire into the nature of the pending suit between the
23 deponent and Plaintiff as it may lead to evidence which has a bearing on the truth and veracity of
24 the Plaintiff and/or the deponent.

25 The matters to be asked about are not privileged and there is no justifiable reason for
26 deponent not to answer the questions propounded. Under the circumstances the deponent should
27 be compelled to appear before this Court to explain why he should not be held in contempt for
28

1 his refusal to answer questions at his depositions.

2 **CONCLUSION**

3 The deponent's refusal to answer question was unjustified. The deponent should be
4 required to appear before this Court to show cause why he should not be cited for contempt.

5
6 CARLSMITH BALL LLP

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8 DATED: Saipan, MP, May 9, 2006.


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10 JOHN D. OSBORN
11 Attorneys for Defendant
12 Maeda Pacific Corporation

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8 Maeda Pacific Corporation
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10 UNITED STATES DISTRICT COURT
11
12 FOR THE
13
14 NORTHERN MARIANA ISLANDS
15

16 TOSHIHIRO TAKAHASHI,

17 CIVIL ACTION NO. CV 05-0026

18 Plaintiff,

19
20 vs. DECLARATION OF JOHN D. OSBORN
21
22 MAEDA PACIFIC CORPORATION,
23 Defendant.
24

25 I, John D. Osborn, declare:

26 1. I am a partner in the Saipan office of Carlsmith Ball LLP, attorneys for Defendant Maeda
27 Pacific Corporation. I have personal knowledge of the matters stated herein and would be
28 competent to testify to same if called upon to do so.

29 2. Attached hereto marked as Exhibits A-D are true and correct copies of the following
30 documents:

31 Exhibit A: Notice of Deposition of Keith W. Ada and
32 Subpoena

33 Exhibit B: Copy of Complaint in CNMI Superior Court
34 Case CV 06-0038C, *Keith W. Ada, d/b/a Ada's*
35 *Consulting Services v. Marianas Sunrise Ent.*
36 *Inc. and Toshihiro Takahashi, Personally and*
37 *as officer of Marianas Sunrise Ent. Inc.*

Exhibit C: Pages 27-34 of the deposition testimony of Keith W. Ada taken May 2, 2006.

Exhibit D: Copy of email of May 3, 2006 and fax letter of May 8, 2006 to Attorney Joseph A. Arriola

I make this Declaration under penalty of perjury under the laws of the United States that the foregoing is true and correct. This declaration is made this 9th day of May 2006 at Saipan, Commonwealth of the Northern Mariana Islands.



JOHN D. OSBORN

1 CARLSMITH BALL LLP
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8 Attorneys for Defendant
9 Maeda Pacific Corporation
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15 UNITED STATES DISTRICT COURT
16 FOR THE
17 NORTHERN MARIANA ISLANDS

18 TOSHIHIRO TAKAHASHI,

19 CIVIL ACTION NO. CV 05-0026

20 Plaintiff,

21
22 NOTICE OF DEPOSITION

23 vs.

24 MAEDA PACIFIC CORPORATION,

25 Defendant.

26 TO: KEITH ADA

27 PLEASE TAKE NOTICE that attorneys for defendant Maeda Pacific Corporation in the
28 above-entitled action will take the deposition upon oral examination of Keith Ada at 1:30 p.m.
on April 28, 2006, before a person authorized by the laws of the United States, or some other
officer authorized by law to administer oaths, at the offices of Carlsmith Ball LLP, Carlsmith
Building, Capitol Hill, Saipan, CNMI. The deposition will continue from day to day until
completed.

Pursuant to the provisions of the Federal Rules of Civil Procedure, Rule 30(b)(4), you are
hereby notified that the deposition shall be recorded by a tape recorder rather than stenographic
means. Upon completion of the deposition, the tape recording shall be delivered to a secretarial
service, which shall transcribe the deposition from the tape recording. The tape recording will be
made available to the deponent by the secretarial service in connection with the review and

1 signing of the deposition by the deponent. Upon completion of such review and signing, the tape
2 recording will not be filed with the Court, it will be returned to the undersigned for reuse.
3

4 CARLSMITH BALL LLP

5 DATED: 4/18, 2006.

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7 JOHN D. OSBORN
8 Attorneys for Defendant
9 Maeda Pacific Corporation

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Attorneys for Defendant
Maeda Pacific Corporation

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

TOSHIHIRO TAKAHASHI,

CIVIL ACTION NO. CV 05-0026

Plaintiff,

vs.

DEPOSITION WITNESS SUBPOENA

MAEDA PACIFIC CORPORATION,

Defendant.

TO: KEITH ADA

YOU ARE HEREBY COMMANDED to appear at the Carlsmith Ball LLP, Carlsmith Building, Capitol Hill, Saipan CNMI on April 28, 2006 at 1:30 p.m. to testify at the taking of a deposition in the above-entitled action pending in the United States District Court of the northern Mariana Islands.

Pursuant to Rule 45(a)(1)(D) of the Federal Rules of Civil Procedure, the text of Rule 45 (c) and (d) state as follows:

(c) Protection Of Persons Subject To Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and

1 impose upon the party or attorney in breach of this duty an appropriate sanction, which may
 2 include, but is not limited to, lost earnings and a reasonable attorney's fee.

3 **(2)(A)** A person commanded to produce and permit inspection and copying of designated
 4 books, papers, documents or tangible things, or inspection of premises need not appear in person
 5 at the place of production or inspection unless commanded to appear for deposition, hearing or
 6 trial.

7 **(B)** Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit
 8 inspection and copying may, within 14 days after service of the subpoena or before the time
 9 specified for compliance if such time is less than 14 days after service, serve upon the party or
 10 attorney designated in the subpoena written objection to inspection or copying of any or all of the
 11 designated materials or of the premises. If objection is made, the party serving the subpoena shall
 12 not be entitled to inspect and copy the materials or inspect the premises except pursuant to an
 13 order of the court by which the subpoena was issued. If objection has been made, the party
 14 serving the subpoena may, upon notice to the person commanded to produce, move at any time
 15 for an order to compel the production. Such an order to compel production shall protect any
 16 person who is not a party or an officer of a party from significant expense resulting from the
 17 inspection and copying commanded.

18 **(3)(A)** On timely motion, the court by which a subpoena was issued shall quash or
 19 modify the subpoena if it:

20 (i) fails to allow reasonable time for compliance;

21 (ii) requires a person who is not a party or an officer of a party to travel to a place more
 22 than 100 miles from the place where that person resides, is employed or regularly transacts
 23 business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such
 24 a person may in order to attend trial be commanded to travel from any such place within the state
 25 in which the trial is held, or

26 (iii) require disclosure of privileged or other protected matter and no exception or
 27 waiver applies, or

28 (iv) Subjects a person to undue burden.

1 **(B) If a subpoena**

2 (i) requires disclosure of a trade secret or other confidential research, development,
3 or commercial information, or

4 (ii) requires disclosure of an unretained expert's opinion or information not
5 describing specific events or occurrences in dispute and resulting from the expert's study made
6 not at the request of any party, or

7 (iii) requires a person who is not a party or an officer of a party to incur substantial
8 expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to
9 or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the
10 subpoena is issued shows a substantial need for the testimony or material that cannot be
11 otherwise met without undue hardship and assures that the person to whom the subpoena is
12 addressed will be reasonably compensated, the court may order appearance or production only
13 upon specified conditions.

14 **(d) Duties In Responding To Subpoena.**

15 (1) A person responding to a subpoena to produce documents shall produce them as they
16 are kept in the usual course of business or shall organize and label them to correspond with the
17 categories in the demand.

18 (2) When information subject to a subpoena is withheld on a claim that it is privileged or
19 subject to protection as trial preparation materials, the claim shall be made expressly and shall be
20 supported by a description of the nature of the documents, communications, or things not
21 produce that is sufficient to enable the demanding party to contest the claim.

22 This Subpoena is issued upon the application of the Defendant Maeda Pacific
23 Corporation.

24

25

APR 18 2006

26

DATED: _____.

27


Dep. CLERK OF COURT

28

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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

9 KEITH W. ADA dba ADA'S
CONSULTING SERVICES.

CIVIL ACTION NO. 06-0038 C

10 Plaintiff

11 || VS.

12 MARIANAS SUNRISE ENT., INC. dba
13 NEO REMINGTON, and TOSHIHIRO
TAKAHASHI, Personally and As Officer
Of Marianas Sunrise Ent., Inc.,

Defendants.

COMPLAINT

16 Plaintiff, Keith W. Ada dba Ada's Consulting Services (hereinafter referred to as "Ada"), by
17 and through his counsel, Joseph Aldan Arriola, Esq., bring this action for judgment against the
18 Defendants, for amounts owed on the use of construction equipment provided by Plaintiff as well as
19 the personal services rendered by Plaintiff to Defendants. Plaintiff further seeks judgment against
20 Defendants for damages caused to Plaintiff's character. In support of his complaint, Plaintiff allege
21 as follows:

23 JURISDICTION

24 1. Jurisdiction is vested in this court pursuant to 1 CMC section 3202

26 | PARTIES

27 2. The Plaintiff is a U.S. citizen and a resident of Saipan, Commonwealth of the Northern
28 Mariana Islands. Plaintiff is engaged in a sole proprietorship consulting business.

EXHIBIT

B

Ex 7

tables'.

1 3. The Defendant company is a corporation organized under the laws of the Commonwealth
2 of the Northern Mariana Islands.

3 4. Defendant Takahashi is a citizen of Japan and residing and doing business in the
4 Commonwealth of the Northern Mariana Islands.

5

6 **AVERMENTS**

7 ***Personal and Equipment Services***

8 5. Plaintiff hereby incorporates paragraphs 1 through 4 above as if fully stated herein.

9 6. Between the periods December 2004 and June 2005, Defendant was engaged in the
10 construction of a Japanese temple at the Banzai Cliff. Between said period of time, Plaintiff provided
11 consultation services and oversaw the project until its completion. As per the parties' agreement,
12 Defendant was to compensate Plaintiff in the sum of \$10,000.00. Despite repeated demands by
13 Plaintiff, however, Defendant has failed and continues to fail to pay said amount due and owing to
14 Plaintiff.

15 7. Between the periods February 2005 and June 2005, Plaintiff provided to Defendant his
16 1992 4x4 Toyota pick-up truck as part of the equipment to be used for the construction of said temple.
17 As agreed between the parties, Defendant promised to pay for the necessary costs of repair and
18 maintenance of Plaintiff's vehicle during and after the completion of said construction project. As a
19 result of the use of Plaintiff's vehicle, Plaintiff has incurred costs for said repairs and maintenance in
20 the sum of \$16,525.00. Plaintiff continued to provide to Defendant the use of his truck over a period
21 of time based on promises made by Defendant to pay said costs.

22 8. Despite repeated demands to be compensated for costs incurred to his truck, Defendant has
23 failed and continues to fail to pay to Plaintiff the above-mentioned amount.

24 9. Between the periods February 2005 to September 2005, Plaintiff provided personal services
25 to Defendant by assisting them in the research of and documentation of certain information relative
26 to and in connection with a pending action initiated by Atom Action against Defendant. Plaintiff
27 incurred fees in the amount of \$1,500.00, of which Defendant promised to compensate to Plaintiff.

28

1 However, Defendant has failed and continues to fail to pay to Plaintiff said amount that is due and owing.

2 10. Between the periods July 2005 and September 2005, Plaintiff provided personal service
 3 to Defendant by assisting them in a labor case matter filed by Eden Quizon against Defendant.
 4 Plaintiff incurred fees in the amount of \$500.00, of which Defendant promised to compensate to
 5 Plaintiff. Once again, Defendant has failed and continues to fail to pay to Plaintiff said amount that
 6 is due and owing to Plaintiff.

7 11. On or about September 16, 2005, Plaintiff assisted Defendant in promoting and attracting
 8 customers to Defendant's Neo Remington club by coordinating with and securing sponsorship from
 9 Pacific Trading Co., Shell gas company, and Frozen Nipple. The service fees incurred by Plaintiff for
 10 organizing and arranging the promo night for the club was \$500.00. Again, Defendant has failed and
 11 continues to fail to pay to Plaintiff said amount that is due and owing to Plaintiff.

12 12. Defendant benefitted substantially from the services provided Plaintiff in the form of
 13 consulting and physical services, as well as the use of said vehicle.

14 13. Despite the services provided by Plaintiff, Defendant has failed to make any payments to
 15 Plaintiff for said services.

16 14. Based on the calculated billing records, the total outstanding amount owed by Defendant
 17 to Plaintiff is \$29,025.00.

18 15. Plaintiff gave written notice to the Defendant specifying the amounts owed for said
 19 services provided by Plaintiff. Defendant failed to respond.

20

21 *Libel/Slander*

22 16. Plaintiff hereby incorporates paragraphs 1 through 15 above as if fully stated herein.

23 17. Sometime in the latter part of the year 2005, Defendant published in the Marianas Variety,
 24 a newspaper of wide circulation, a Public Announcement informing the general public that Plaintiff
 25 "is no longer an employee" of Defendant, and that any transaction made by Plaintiff will not be
 26 honored by Defendant.

27 18. Plaintiff was not and never was an employee of Defendant. Plaintiff provided services
 28 to Defendant as an independent contractor.

1 19. Defendant maliciously communicated to the general public false and defamatory
2 statements by placing said public announcement as if Plaintiff was a terminated employee who was
3 not trustworthy. The defamatory matter was understood by those persons to have such meaning.

4 20. The defamatory matter was calculated to cause, and did cause, great injury to Plaintiff's
5 reputation of honesty, uprightness of character, and truthfulness.

6 21. Plaintiff is entitled to exemplary damages as a result of Defendants' defamatory
7 statements.

PRAYER FOR RELIEF

10 WHEREFORE, Plaintiff request judgment against the Defendant:

11 1. For the amounts now due and owing the Plaintiff, an outstanding balance of \$29,025.00, plus
12 interests;

13 2. For punitive damages;

14 || 3. For reasonable attorney's fees and Costs of suit; and

15 4. For such other and further relief as the Court may deem proper.

16 DATED this 1st day of February, 2006.

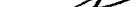
Respectfully submitted,

~~JOSEPH A. ARRIOLA (F021)~~
Attorney for Plaintiff

Attorney for Plaintiff

VERIFICATION

23 I, KEITH W. ADA, under penalty of perjury declare that: (1) I have read the foregoing
24 Complaint and understand the contents thereof; (2) I hereby verify that the contents are true and
25 correct; and (3) I have affixed my signature below on the day of February, 2006, on Saipan,
Commonwealth of the Northern Mariana Islands.


KEITH W. ADA
Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

TOSHIHIRO TAKAHASHI,) CIVIL ACTION NO. CV 05-0026
)
Plaintiff,)
)
v.)
)
MAEDA PACIFIC CORPORATION,)
)
Defendant.)
)

DEPOSITION OF KEITH W. ADA

Taken at the Offices of Carlsmith Ball, LLP
Carlsmith Building, Capitol Hill, Saipan
Commonwealth of the Northern Mariana Islands

May 2, 2006

=====

Transcribed by:
Celina A. Concepcion
dba **Judicial Services**
Atuhong Place, Chalan Piao
P. O. Box 500051-CK
Saipan, MP 96950
(670) 235-7585



1 Q When was the next you had any contact with Mr.
2 Takahashi?

3 A After?

4 Q After he came back a month later?

5 A ...[pause]--

6 Q Were you still working on the temple project....

7 A Yeah.

8 Qat that time?

9 A Still working on it, I was working on it until --
10 until May.

11 Q Okay--

12 A I'm sorry, June.

13 Q Okay, your relations with him were pretty good up
14 through that period of time?

15 A Yeah.

16 Q Okay, when did they start to ah, deteriorate?

17 MR. TORRES: Objection. That's not relevant to this
18 case.

19 MR. OSBORN: Go ahead.

20 A Um, I don't think that I should discuss that? I
21 mean it's--

22 MR. OSBORN: Well....

23 A I have um--

24 MR. OSBORN:I have the opportunity to ask you
25 questions about this, Mr. Ada, so I'd like you to go

1 ahead and discuss that, if you would, please. When did
2 your relationship with Mr. Takahashi begin to
3 deteriorate.

4 A Um, like I said, I don't think I should answer that,
5 I mean without my attorney present?

6 Q So you--

7 A Um, this will be--

8 Q You're gonna refuse to answer that?

9 A Um, yeah, I think I should. Yeah.

10 Q And what's the reason for that? In your mind.

11 A Well, it might jeopardize my--

12 Q Okay, well you're using Mr. Takahashi now, aren't
13 you?

14 A Yes.

15 Q Okay, because you say he owes you a lot of money,
16 right?

17 MR. TORRES: Objection, I think the witness has
18 testified that he's not willing to testify to that as it
19 may affect his pending case and I think--

20 MR. OSBORN: Is he denying -- is he denying that--

21 MR. TORRES: And I think you should respect that
22 because it has nothing to do with this case.

23 MR. OSBORN: Well, we'll let the court make that
24 judgment, Mr. Torres. You're suing Mr. Takahashi for a
25 lot of money, right?

1 MR. TORRES: Again, ah we object as that the -- the
2 witness has testified that he's not willing to testify to
3 that area because it may jeopardize his pending case.

4 Q You're the plaintiff in a lawsuit entitled Keith W.
5 Ada, dba Ada's Consulting Services versus Marianas
6 Sunrise Enterprises, Incorporated, dba Neo Remington
7 and Toshihiro Takahashi, personally, and as an
8 officer of Marianas Sunrise Enterprises, Inc.,
9 defendants, Civil Action 06-0038C in the Superior
10 Court of the Commonwealth of the Northern Mariana
11 Islands, right?

12 MR. TORRES: Objection. The document speaks for
13 itself and the witness has testified that he wants to
14 preserve the status quo of this case and he doesn't have
15 his attorney present and ah, he doesn't wanna jeopardize
16 his case and I think we should respect that and,
17 additionally, it's completely irrelevant, it has nothing
18 to do with the fall, the injury, or -- or even remotely
19 possible to this case.

20 MR. OSBORN: You're the plaintiff in that lawsuit,
21 aren't you, Mr. Ada.

22 A I guess everything is on there.

23 Q Okay, and Joey Arriola represents you on that?

24 MR. TORRES: Objection, the document speaks for
25 itself.

1 Q Joey Arriola represents you on that, doesn't he?

2 A Yes.

3 Q Okay. Can you tell me what kind of a consulting
4 services you were providing for ah -- ah Mr.
5 Takahashi that ah -- we'll strike that. Did Mr.
6 Takahashi have some kind of -- oops! Didn't see the
7 light.

8 OFF/ON RECORD

9 MR. OSBORN: I thought this tape had ah -- needed to
10 be turned, but we still have some time left, so. Mr.
11 Takahashi has a ah, a lawsuit going with an outfit called
12 Atom Action? Is that correct?

13 MR. TORRES: Again, we object to the use of that
14 document, the document speaks for itself, ah if anything,
15 that document is not related to this case and we object
16 to the line of questioning as to that complaint, that
17 document as it is not relevant.

18 MR. OSBORN: Okay, does he have a lawsuit going with
19 Atom Action?

20 A I don't think I should answer that.

21 Q Well, we'll take this up with Judge Munson. Let me
22 ask you this, I'm gonna mark this as ah, Exhibit 7,
23 I guess it would be, is that a copy of the complaint
24 that Mr. Arriola filed on your behalf?

25 A ...[unintelligible].

1 Q Okay, and it says in here that you provided personal
2 services to defendant by assisting him in research
3 of and documentation of certain information relative
4 to and in connection with a pending action initiated
5 by Atom Action against defendant--

6 A Mr. Osborn, with all due respect, um I'm gonna have
7 to refrain from answering any of those questions
8 which involve my suit versus him, versus Mr.
9 Takahashi. Um--

10 Q Okay, what lawsuit does Atom--

11 MR. TORRES: And for the record, we would like to
12 make our objection as well and I think client has made it
13 clear that he has an attorney presently regarding this
14 case, he wants his attorney present, he doesn't wanna
15 jeopardize this case and the allegations, asking the
16 client -- the -- the -- Mr. Keith Ada regarding the
17 allegations, whether these allegations are true or not,
18 may jeopardize this case if by some -- by his responses
19 and I believe his attorney should be present and ah, we
20 gotta respect that at this point.

21 MR. OSBORN: I'm not asking whether the allegations
22 are true or correct, Mr. Torres, I'm asking him what is
23 the service he provided in connection with Atom Action.
24 That's all.

25 MR. TORRES: The document speaks for itself.

1 MR. OSBORN: No, it doesn't, it says he offered
2 assistance in research and documentation of certain
3 information relative to and in connection with a pending
4 action initiated by Atom Action against defendant. Let
5 me approach in a different way.

6 MR. TORRES: Could I see--

7 MR. OSBORN: Why--

8 MR. TORRES: Could I see that?

9 MR. OSBORN: Sure. Paragraph ah, 9, lines 24 through
10 27. Let me ask you this, Mr. Ada, why is Atom Action
11 suing Mr. Takahashi.

12 MR. TORRES: Objection, the witness has testified
13 that he would like his counsel present and I think we
14 gotta respect that.

15 MR. OSBORN: It doesn't have anything to do with
16 veracity, all I'm asking is why is Atom Action suing
17 Mr. Takahashi.

18 A Again, I have to refrain from answering--

19 Q Do you know why they're suing him?

20 MR. TORRES: We object as the witness has testified
21 that he wants to ah, refrain from answering that, it's a
22 case pending, it's a case that may affect his financial
23 interest ah, among other interests, and ah, it has
24 nothing to do with this case.

25 Q Do you know why Atom Action is suing Mr. Takahashi?

1 It's a yes or no question.

2 MR. TORRES: And, ah we object, can we have a copy of
3 the complaint?

4 MR. OSBORN: Sure, I'll make you one.

5 A I really hate repeating myself, again I have to
6 refrain from answering any of -- I'm gonna refrain
7 from answering any of those questions unless my
8 attorney is here.

9 Q Okay, shall we get Mr. Arriola on the phone and see
10 if he's available to come over?

11 A Ah, that will be better.

12 MR. OSBORN: Okay, let's go off the record then.

13 OFF/ON RECORD

14 MR. OSBORN: We're back on the record, we tried to
15 call Mr. Arriola's office, ah he wasn't available, we'll
16 try and contact him later, but I don't wanna hold up the
17 ah, deposition. You're gonna refuse to answer any
18 question about ah, the ah, lawsuit where you sued Mr.
19 Takahashi, is that correct?

20 A Yes, sir.

21 Q Okay, and you're not gonna tell me why Atom Action
22 is suing Mr. Takahashi, is that correct?

23 A Yes, sir.

24 Q Okay, and the reason for that, please?

25 A As I stated earlier, it might my jeopardize my

1 lawsuit.

2 Q And, how does that jeopardize your lawsuit to tell
3 me why Atom Action is suing Mr. Takahashi?

4 A First and foremost, um my attorney has um -- has
5 consulted me not to discuss this case, the suit,
6 with anybody, so.

7 Q Fair enough. We'll take it up with Judge Munson.
8 When was the last time you talked with ah,
9 Takahashi?

10 A I don't know.

11 Q What's your best estimate?

12 A Last year?

13 Q When last year, to the best of your recollection?

14 A September.

15 Q Okay, do you recall what you talked about on that
16 occasion?

17 A Ah, yeah.

18 Q What did you talk about, please?

19 A I was trying to arrange a payment plan.

20 Q Payment plan for?

21 A For the money that he owed me.

22 Q Okay, which is the subject to the lawsuit....

23 A Yes.

24 Qthat you don't wanna talk about?

25 A Yes.

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FAXED**MAY 8 2006****FACSIMILE TRANSMISSION**

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DATE: May 8, 2006

TO:	Name	Fax No.	Phone No.
Joseph A. Arriola		(670) 234-5503	(670) 234-5501
cc:Victorino DLG Torres		(670) 233-5510	(670) 233-5506

FROM: John D. Osborn**NUMBER OF PAGES INCLUDING THIS COVER SHEET: 2****CASE NAME:** Takahashi v. Maeda Pacific**CASE NUMBER:**

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MESSAGE: JOEY:

May I have a response to my e-mail to you of May 3, 2006?; copy attached. I intend to file a Motion to Show Cause for Keith's refusal to answer some deposition questions. If this is not resolved by the end of business today I will file the motion early tomorrow morning. I have a stipulation from Vic that the matter can be heard on 5/18/06 in the afternoon if Judge Munson's schedule permits. Otherwise I will ask that it be heard on the morning of the 19th when we have our Pretrial Conference.



If problems occur, please call our fax operator at 670.322.3455.

John D. Osborn

From: John D. Osborn
Sent: Wednesday, May 03, 2006 9:48 AM
To: Joseph A. Arriola
Cc: Victorino DLG Torres
Subject: Keith Ada

Joey:

I represent Maeda Pacific in a suit filed by Vic Torres on behalf of Toshihiro Takahashi. A witness in the case is Keith Ada.

We took Keith's deposition yesterday and part of the deposition were questions I wanted to ask regarding the lawsuit you have filed on behalf of Keith against Takahashi. Keith refused to answer without you being present. We stopped the deposition and attempted to call you, but you were unavailable.

I would like to re-convene Keith's deposition to conclude my questioning in the area he refused to answer. I request that you contact Keith in the immediate future so that the matter can be scheduled at a time when you can be present. I think my questions were legitimate and I would like to have them answered. I don't want to have to bring this to the attention of Judge Munson, but I will do so if necessary. We have a May 30, 2006 trial date. Vic is going to be off-island from May 6 to 17 so we need to get this done either before he leaves or as soon as he gets back.

Please contact Keith and advise whether he will agree to go forward with the questioning with you being present.

Regards.

John

Group Send Report

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